# Resolution of Child-related Disputes for Parents after Dissolution of their Relationship:
## Ongoing Relationship between Children and Non-resident Parent

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**要　旨**

英国では、親の関係解消時に子どもの将来の生活をどのように保護するかが問われる場合、両親の合意が第一に重視され裁判手続よりも合意形成援助（mediation）が望ましいとされる。それは、両親の関係破綻から子どもが受ける負の影響を最小限にすることを目指すからである。裁判所は子どもの利益を最大限考慮するが、子どもとの面会交流をめぐって別居親は様々な困難に直面する。そこで、専門家も関与する民間の子ども面会センター（child contact centre）が、面会の方法や面会に関する情報を提供して面会が円滑に行われるよう支援を提供している。英国の制度は、両親が夫婦関係を解消した子どもたちの利益だけでなく、別居親の利益にも効果的な役割を果たしている。

**Keywords: parental responsibility, residence order, contact order**

# I. Introduction

The discussion in the present paper will mainly be concerned with some types of families in England and Wales: married couple families, cohabiting couple families (including both opposite- and same-sex couples), and civil partnered families with dependent children. It aims to research how the private law and professional intervention support parents and children during their difficult period arising from the dissolution of parental relationship.

The present paper is actually one of the parts of my research for a doctoral thesis. In the previous paper, how to resolve child-related disputes after a divorce in Japan was discussed, and in the present one, how to resolve child-related disputes after the dissolution of parental relationship in England and Wales is discussed. The term 'the dissolution of parental relationship' is used in the present paper instead of the term 'divorce' because the latter one can not represent all the different types of parental relationship dissolution in England and Wales. It is interesting that the English law allows both opposite- and same-sex couples to form a legal relationship. When these couples dissolve their relationship legally, the term divorce or judicial separation or dissolution of civil partnership will be applied respectively. This may be one of the differences between the Japanese and the English system because in Japan opposite-sex marriage is the only way for spouses to form a legal relationship as a couple and when these spouses dissolve their relationship, it is called divorce. In my master's thesis, a comparative research study of the divorce mediation systems in Japan and England and Wales was conducted and in the doctoral thesis, a comparative research study of child-related disputes resolution systems after the dissolution of parental relationship will be conducted between these two countries again. From this study, I aim to find the proper way how to improve the existing system in Myanmar. Therefore, the present paper plays an important role to complete my research for a doctoral thesis and to achieve the aim of the study.

In recent times, because of a variety of complicated parental relationships and the advent of assistant reproductive technologies in England and Wales, it is important to understand what the difference is between the concept of parentage, parenthood and parental responsibility. Without the knowledge of its differences, it is impossible to define who the legal parents are of a child. Therefore, the second part of the paper will explain it in detailed and the third part will discuss the dissolution of the relationship between a child's two parents. As it is well known, the UK is the divorce capital of Europe[1]: more than 40 percent of marriages end in divorce, and in 2010, 104,000 children in England and Wales were affected parental

divorce.[2] This is not a sufficient figure to represent the total number of children affected parental relationship dissolution: it represents only the married couple families. Compared to married couple families, cohabiting couple families seems to be more fragile and children in those families are more likely to experience their parental relationship dissolution.[3] Some evidence shows that cohabiting couples are two times more likely than married couples to dissolve their relationship.[4] Notably, those children living in civil partnered families are not exceptions: 472 civil partnered coupled parents were ended their relationships in dissolution in 2010.[5]

Even though the parental relationship between a child's two parents may be dissolved in a variety of ways, the relationship between parents and their children may not be ended as easily. It needs to be maintained because parent-child relationship plays a crucial role in shaping the children's development.[6] Therefore, the fourth part of the paper aims to explore how private law in England and Wales operates to resolve child-related disputes arising from parental relationship dissolution. Within the scope of the private law arena, application for residence and contact order may be the most common currently. Unlike in Japan, a court in England and Wales may make a residence order in favor of more than one person (normally parents) which may be known as shared residence order and it allows both parents who are no longer living together to take care and bring up their children together.

In the final part of the paper, the issue of the ongoing relationship between children and non-resident parents will be discussed and particular attention will be given to what will be needed to facilitate the making of meaningful children's relationships with their non-resident parents, who are overwhelmingly fathers. In reality, arranging child contact after the parental relationship dissolution is a complex issue and may result in the child involved have a difficult relationship with the non-resident parent. Therefore, those people involved in the dissolution of parental relationships may need the help to develop and move forward with their child contact arrangements. This was partly fulfilled since years ago with the establishment of supported child contact centers and services under the accreditation of National Association of Child Contact Centers (hereinafter as NACCC). Currently, 325 child contact centers and services are located in England and Wales and Northern Ireland.[7]

The conclusion will discuss how to promote the current system to be beneficial not only for the children but also for the non-resident parents.

## II. Parentage, Parenthood and Parental Responsibility

With the development of assistant reproduction technology (hereinafter ART) and surrogacy arrangement in contemporary society, 'what is a parent?' is becoming a question that has a multitude of dimensions and permits no straightforward answer. Recently, it may be a highly contested one and there may be no consensus yet on what a parent should be. In England and Wales, the Human Fertilization and Embryology Act 2008 (hereinafter HFEA 2008) and Surrogacy Arrangements Act 1985 (hereinafter SAA 1985) regulate how to use both of the advent technologies and how to define who the legal parents are of a child born as a result of them. Under this legislation, the existence of genetic link between a child and a parent is no longer a necessary condition for legal parenthood; the legal parents of a child may or may not be the same person as the genetic parents of the given child. Therefore, a meaningful distinction should be drawn here between the concept of genetic parentage and legal parenthood.

## a. Parentage

According to the Black's Law Dictionary's definition of parentage, parentage is the state or condition of being a parent; kindred in the direct ascending line. It is usually used to describe the establishment of the genetic connection or the blood tie between a child and a parent.[8] If two persons of opposite sex provide the genetic material (sperm and eggs) for a child's creation, they can be called the genetic parents or natural parents of the child.[9] Under particular circumstances, it is possible for a child to possess two biological mothers at the same time: the first one is the genetic mother who donates her egg to be fertilized and implanted in the womb of another and the second one is the gestational mother who carries it and delivers the resulting child. [10] This can be found in some cases of ART and surrogacy arrangements.[11] Although those genetic and biological parents always contribute to create the life of a child, sometimes they do not play any role in the child's upbringing and may not be the child's career after birth. This is the significant difference between the concepts of parentage and parenthood because parenthood is always associated with the responsibility for raising a child.[12] In other words, parentage is the de facto bond between the parents and the child and parenthood is social or legal relationships between the adults (parents or non-parent) and the child.

## b. Parenthood

Parents are naturally expected to feed, clothe, educate and to promote the welfare of their child/ren. Therefore, those people who are looking after and raising the children may be socially at large

recognized as parents even they are genetically or biologically unrelated to the children. These may include step-parents, foster-parents, grandparents, relatives, and so on.[13] However, simply by virtue of looking after a child, they do not have automatically a legal status. Here, it should be explained who the legal parents of a child are, how to become the legal parents of a child, and what legal powers and responsibilities are vested in them.

With regard to the mother, the law clearly says, a legal mother of a child is the woman who gives birth to the child and no other.[14] In spite of the donated egg that was used in the course of ART services, the legal mother of the child born is the woman who carries and gives birth to the child.[15] The same is true for surrogacy arrangements where the gestational mother is not genetically related to the child born.

As regards to the father, it is more complex to define who the legal father of a child is. If the mother is married and her husband does not deny paternity, the mother's husband will be legally treated as the father of the child.[16] If the mother is unmarried and both she and her partner wish to establish a paternity, the mother's partner's name can be legally registered on the birth registration as the father of the child.[17] If paternity is disputed, it can be resolved in legal proceedings.[18] These are concerned only with children who are born as a result of sexual intercourse and the latter will be concerned with the children born as a result of ART services. Under the HFEA 2008, if the mother is married and her husband consented to her receiving the donated sperm or to a donated embryo or to her artificial insemination, the mother's husband will be legally recognized as the father of the child.[19] If an unmarried mother undergoes ART services together with the consent of her male partner, the law may treat the mother's partner as the father of the child.[20]

Furthermore, if the mother in a civil partnership relationship used ART services with the consent of her female partner, the mothers' partner will now be presumed as the parent of a child born even if not as the mother.[21] If the mother is not in a civil partnership, the mother's female partner can become a parent only if she meets the agreed female parenthood provisions.[22] In this case, where a child is deemed to have a female parent, no other man will be treated as the father of the child[23] and then the child will be legally fatherless. It should be here noted that, merely by virtue of sperm donation, in cases of licensed treatment of ART services, the sperm donor may not be the legal father of the child born.[24] The idea of the resulting child's need for a father is now removed from the law.[25]

Another condition in which a child was conceived using the sperm of one of a male civil partners and born by a surrogate mother, may cause the child born to be legally motherless. According to Section 2(2) of the SAA 1985, it is intended for a surrogate mother to relinquish parental responsibility after the birth of a child. In this case, the status of legal parenthood may be transferred to married couples or civil partners or any

two persons who are living as partners in an enduring family relationship legally.[26] Importantly, those couples, at least a member of a couple, must have a genetic link to the child. Otherwise, they have to adopt the child under the Adoption and Children Act 2002 in order to be the parent of a child through surrogacy.[27] After a couple has been granted a parental order over a child born by surrogacy, the parental status and parental responsibility of the surrogate mother will be thereby extinguished.[28]

As we have already seen, a child may possess a genetic parent, a gestational parent and a legal parent at the same time. Amongst them, only the legal parent legally entails a primary responsibility, the so-called parental responsibility, to bring up, to safeguard and to care for their children.[29] Therefore, the concept of legal parenthood is clearly deals with legal responsibility rather than a genetic relationship.

### c. Parental Responsibility

According to Section 3(1) of the Children Act 1989 (hereinafter as CA 1989), parental responsibility (hereinafter as PR) encompasses all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property. It may cover, for instance, decisions relating to place of residence, religion, education, medical treatment, applying for a passport, taking a child abroad for holidays, and so on. As mentioned above, PR automatically follows legal parenthood. However other individuals may also acquire PR by entering into a PR agreement with the mother or through the court orders.[30]

In the event of the death of parents, the guardian, if any, can acquire PR automatically. If a person with no PR is granted a residence order (hereinafter as RO), that person will have PR automatically for the duration of that order.[31] Where a local authority has an interim order, a full care order or an emergency protection order, it will obtain PR automatically until the order lasts.[32] Here, one should be aware that legal parenthood and parental responsibility is not the same thing: legal parenthood is the status of being a parent under the law, whilst parental responsibility is the power to act as a parent under the law. The law does not regard a person as a legal parent of a child merely by virtue of possessing PR over that child.

In England and Wales, PR is not limited to a child's legal parent only. In this case, a legal parent may not lose or surrender or transfer PR because a number of people may have PR for the same child at the same time.[33] This is called sharing PR and each person possessing PR have a right and a duty to take all decisions relating to the child's upbringing independently without consulting each other before doing so.[34] However, the CA 1989 provides two limitations: (1) the decisions which require the consent of more than one

person can not do independently[35], and (2) all the rights, duties, powers, responsibilities and authority in PR may not be exercised in a way which is incompatible with a court order.[36] As regards to duration of PR, PR will automatically terminate when the child attains the age of majority, 18, unless it is brought to an end earlier by a court order.[37]

Otherwise, although parents dissolve the relationship between them, when they have the child/ren under 18, PR does not terminate automatically. In this case, parents have to decide their own arrangements for the future of their children: where the child/ren will live; who they will remain in touch with, and so on. In case of the parents are unable to reach an agreement on their own, the court will intervene in it. Unless the court is satisfied with the parents' proposed arrangement of the children, the parents are not able to be granted the decree of divorce or the decree of judicial separation or the decree of dissolution of partnership[38], but such cases are rare.[39]

As mentioned above, same-sex couples in England and Wales are now able to create a legal family life with the help of advent technologies. Moreover, they can become legal parents of the child born without adoption. This is a recent development in the family law of England and Wales and it can be said that it brings fairness for same-sex couples to form a family life same as other opposite-sex couples. However, it may be said that it brings legal unfairness for those children born for same-sex couples because they may become legally fatherless or motherless children throughout their life. Therefore, it may be more desirable for these children in England and Wales if the English law recognize both the rights of the adults and the rights of the children equally.

## III. The Dissolution of the Parental Relationship

The legal process of the dissolution of a relationship of an opposite-sex married couple is called a divorce and of a same-sex civil partnered couple is called the dissolution of a civil partnership. Although the expressed term is different, the procedures to proceed in both processes are the same.[40] The detailed procedures are mainly provided in the Matrimonial Causes Act 1973 (hereinafter MAC 1973) and the Family Procedure Rules 2010 (hereinafter FPR 2010). In the following paragraphs, where the term 'the dissolution of a relationship' is used, it should be taken to include both matrimonial and civil partnered relationships.

In cases that both parties agree to the dissolution of their relationship and the proposed arrangement for their child/ren, the special procedure may be applied on their petition. In this case, it will not be required of the applicant and respondent to appear before the court because, through a postal service, the

applicant can present a petition, and the respondent can show the wish not to defend the petition and, finally, they can get the certificate of divorce or civil partnership via mail only if the court is satisfied with the contents of the petition.[41] Therefore, the special procedure process is sometimes referred to as postal dissolution of a relationship.[42] However, in many cases, parties may prefer to see a solicitor before filing a petition. By so doing, they are able to obtain some information and advice on their divorce including their children's matter from a legal profession. In such cases, the special procedure may not be a complete administrative process but has a juristic aspect because of the involvement of a solicitor.

If one of the parties does not agree on the dissolution of their relationship, a petition may be filed to a relevant court after completing the preconditioned requirements including attendance of a mediation information and assessment meeting (hereinafter MIAM) with a mediator[43]. Formerly, under Section 29 of the Family Law Act 1996 (hereinafter FLA 1996), only those person who intend to apply for public funded legal aid, had to attend the information meeting with a mediator to consider whether their disputes would be suitable to be resolved through mediation. However, since 6 April 2011, a substantial change was introduced by the FPR 2010 and, since then, all people who want to apply for a court order linked to their relationship dissolution require attending MIAM before making their application. If they fail to do so, the court will refer them to a meeting with a mediator before the court proceeding moves forward.[44] This is the visible effort of the FPR 2010 to make the applicants obliged to consider mediation prior to application; however, it does not make the applicants to go mediation as a compulsory requirement. Therefore, it can be said that the divorce mediation system in England and Wales is somewhat different than that in Japan in the aspect of compulsory requirement. However, the system in England in Wales does not also free from making pressure to the divorcing parties to use mediation.

Even though the disputing parties reach an agreement on dissolution of their relationship through a mediation, the dissolution of their relationship still need to be granted by a court order. When they cannot reach an agreement, the court will make a decision over their disputes based on whether their relationship is irretrievably broken down. If the court satisfies that the applicant has met the legal requirements, it will pronounce a decree nisi first. Then the applicant needs to apply for a decree absolute if they want to finalize the dissolution of their relationship legally. In 2011, 129,298 petitions were filed for the dissolution of the relationships including both marriage and civil partnership and 122,220 were granted decree nisi and 119,610 were granted a decree absolute.[45]

Unlike in Japan, a court in England and Wales is able to grant a judicial separation order to the

applicants who are in a relationship.[46] It is an order allowing the parties to live separately with their spouses, but not an order to terminate their relationship.[47] Although it is not used very often, it may be helpful for those couples who are forbidden to get divorce because of their religious or cultural reasons. The procedure to follow is very similar to that of dissolution of relationship. If an applicant can prove one or more of the basic five offences, adultery, unreasonable behavior, desertion, two years separation with consent, or five years separation without consent, the court may finalize the proceeding by granting a judicial separation order. In 2011, there were 227 petitions were filed for judicial separation and 155 were granted.[48]

As have already seen, the law explicitly regulates how to dissolve the relationship of an opposite-sex married couple or of a same-sex civil partnered couple and how those couples are legally separated without dissolution of their relationships. Nonetheless, no legal requirement can be found for the unmarried cohabiting opposite- or same-sex couples to terminate their relationships. This may be because cohabitation gives no legal status to a couple cohabited. Although the law does not recognize a cohabiting couple as a legal union, the number of people living in cohabited relationship is still increasing.[49] Cohabiting couple families nowadays are one of the common family types in the UK and the same may be also true for England and Wales.[50] In 2010, 338,800 children were born outside marriage in England and Wales and it was represented to 46.8 percent (nearly half) of all children born in the same year.[51] Although the precise number is not known, an increasing proportion of children from cohabiting couple families may experience the dissolution of their parents' relationship.

**Table 1: Types of Family in the United Kingdom (2001 & 2011)***

| Family Type | | 2001 | 2011 |
|---|---|---|---|
| Married or Civil Partnered Couple Family | With Dependent Children | 4,833 | 4,519 |
| | Without Dependent Children | 7,447 | 7,558 |
| Cohabiting Couple Family | With Dependent Children | 809 | 1,100 |
| | Without Dependent Children | 1,365 | 1,816 |
| Lone Parent Family | With Dependent Children | 1,745 | 1,958 |
| | Without Dependent Children | 767 | 925 |

Source: Office for National Statistics

*The number should be counted in thousands.

When a couple with the dependent child/ren is dissolved their relationship, both the parents and their child/ren are affected. Currently, one in four children experiences the dissolution of their parents' relationship by the age of 16.[52] In 2011, 109,656 children were involved in the private law applications following the dissolution of their parents' relationship.[53] Under this situation, a great number of children may have complex psychological tasks in adjusting their family breakdown process and changes in their lives.[54] The next part will explain how the parents should resolve their disputes in a constructive way to minimize the negative impact to their children from their relationship breakdown.

It was found that the court in England and Wales plays an important role in the process of the dissolution of the relationship. Without a court order, it is impossible for a couple to dissolve their relationship legally. This may be an unnecessary judicial influence on the resolution of a private matter.

In order to grant an order of dissolution only for those couples with children, the court usually examine whether the proposed children arrangements are satisfactory for the interest of the children. This may be a necessary requirement for the future of those children whose parents are going to dissolve their relationship. Therefore the court in England and Wales seems desirable to see a secure future plan for the children at the time of their parents' relationship dissolution.

These are the other differences between the Japanese and the English system because in Japan, as long as both parents agree on their divorce (including children's matter only for those couples with children), there is no room for a court to interfere in their decisions and those divorcing parties can get divorce easily by submitting a divorce registration form to the respective registration office. It may be because in Japan, family matters are recognized as a private matter and the disputing parties on these matters are usually encouraged to solve their own problems by themselves. Therefore, only if they can not get agreement on their own, they may go to a court and solve their problems with the help of the court. However, in England and Wales, even the divorcing parties have no children and agree to dissolve their relationship, they are not free from judicial interference as I mentioned before.

Therefore, it may be desirable, in England and Wales, for those divorcing couples with no children to allow them to dissolve their relationship without court interference and, for those divorcing couples with children to encourage them to decide the best arrangements for their children at the time of the dissolution of their relationship. On the other part, it may be better for those divorcing couples with children in Japan if the court do more involvement in deciding children's matter at the time of parental divorce.

## IV. The Resolution of Child-related Disputes after the Dissolution of Parental Relationship

As long as both parties agree on the dissolution of the relationship or separation and all issues relating to their children, and the court satisfies with their proposed arrangements for children, then there is no room for private law to intervene in it. The possible response what the court would do is granting a decree for dissolution of their relationship or a decree of judicial separation without applying Section 42 of the MCA to delay granting a decree absolute.

However, where one of the parties defends a petition based on disagreement concerned with children issues, the private law proceedings will be applied then with a regard to the child's welfare as the paramount consideration.[55] According to the practice direction 12B of the FPR 2010, such proceedings will be commenced with a First Hearing Dispute Resolution Appointment (hereinafter FHDRA). This is a newly introduced procedure and its purpose is to identify the issues between the parties and to see whether it is possible for the parties to reach an agreement at an early stage. At the FHDRA, same as described in part III, it will be first checked whether the application complies with the pre-application protocol of the FPR 2010; mediation should be considered prior to making application. If the parties are failing to comply with it, the court will have to order them to do so.

Only if the parties had already attended MIAM to consider mediation (usually out-of-court mediation), and they still do wish to pursue the court proceedings, the court will then have continued the FHDRA. During the period of FHDRA, mediation again but absolutely in-court mediation service will be provided to the disputing parents prior to court hearing. Negotiation between two parents with non-intervention by the court is a desirable way of resolution under the FPR 2010 and only if the parents are unable to reach an agreement voluntarily, the court will have to impose a judgment. Some scholars found that the conflict and fighting of two parents following a relationship breakdown may be very damaging to the children.[56] Therefore, the newly adopted procedure encourages the parents to use mediation as much as possible because negotiation through mediation is less confrontation than the court hearing in the litigation and avoiding the hostile situation between two parents is expected to minimize the harm caused to children. This new procedure of FHDRA is entirely in harmony with the no order principle of the CA 1989.[57]

During the FHDRA, the people who will attend the meeting may include a judge or a magistrate, a Children and Family Court Advisory and Support Service (hereinafter CAFCASS) officer, the disputing

parents, and a mediator when available.[58] In many instances, the court may ask a CAFCASS officer to provide a report relating to the contested children matter. Prior to 2001, providing such report was usually undertaken by a family court welfare officer. However, on 1st April 2001, the CAFCASS was established and since then the CAFCASS officer has taken the functions to provide the information relating to children involved in the family proceedings and advise a court what it considers to be the best interest of the individual children.[59]

With a willing to reach a voluntary agreement between the disputing parents at an early stage, the judge and the CAFCASS officer, with the assistance of a mediator, will seek to mediate the case and explore with the parties the resolution of all or some of the issues between them.[60] When an agreement is reached through FHDRA, a consent order will be made to confirm what was agreed between parents, only if the court considers it to be the best interest of the child.[61] If no agreement is reached, the court will ask them for further evidence, further necessary reports and further hearing in order to determine what is in the children's best interests.

Those court orders may be included n one or more Section 8 orders of the CA 1989; a residence order, a contact order, a prohibited steps order or specific issue order. In 2010, there were 40,420 children involved in application for residence and 46,350 children involved in applications for contact.[62] This includes not only those applications made by married or civil partnered parents but those applications made by unmarried cohabiting parents also. The law opens to all parents, whether married or civil partnered or cohabiting, to be able to apply for private law proceedings relating to their natural children or step-children of their family. Interestingly, in England and Wales, it is also available for a grandparent to make an application for contact with a grandchild under the permission of a court.[63] The next part will explain what the residence and contact order are and what rights and responsibilities are included in those orders.

### a. Residence Order

Residence order (RO) is an order settling the arrangements to be made as to the person with whom the child is to live.[64] It can also provide PR (excluding the power to agree to adoption or refuse to agree to adoption or appoint a guardian) to any person in whose favor the order is made as long as the order remains in force.[65] However, it can not provide the order holder the right to change the surname of a child or to remove the child from the jurisdictional country for more than one month without the written consent of all persons who have PR or a court order.[66] When one of the parents is granted a sole RO, the other non-resident

parent will lose the opportunity to take day-to-day care of the child physically but not the right to exercise PR over the child; he/she is still be able to participate in deciding the child's care and upbringing matter.[67] This may be theoretically true, however in reality, the majority of non-resident parents (usually fathers) are likely to be neglected by the resident parents (usually mothers) and the role of non-resident parents in shaping the children's future development may be diminished, and eventually may disappear from the children's lives.[68]

Under some circumstances, whether exceptional or unusual,[69] the court may grant RO in favor of more than one person even though they are living in different places or in different countries.[70] This will be known as shared RO and in this instance, the order may specify the periods spent in the different households concerned.[71] In recent decades, shared RO becomes more preferable than to sole RO and an increasing number of children are now sharing their time between each parent.[72] However, it remains relatively uncommon and sole RO is sill more usual currently under the presumption of status quo principle[73]. Some researchers found that RO is frequently sought by and granted to mothers and contact order is by and granted to fathers:[74] 89 percent of parents who applied for a contact order were in the arrangements of resident mother and non-resident father.[75] Such type of stereotypical division of parental role is being criticized by the non-resident fathers as a strong influence of gender bias.

## b. Contact Order

The contact order (hereinafter as CO) is an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other.[76] Not only the parents, but the children's sibling, grandparents, relatives and friends are also able to seek a contact order when the resident parents deny seeing children.[77] A court granted contact order may either be direct or indirect contact order: the former may involve a short visit, an overnight visit, a long visit and the latter may involve telephone or written contact.[78] In the case of granting a direct contact, the court may define the duration, frequency, times and location of such visits.[79] Only in case the direct contact order is impossible, the court will render an indirect contact order and then, the resident parent will be encouraged to co-operate within it.

Under some circumstances, in order to provide a safe contact to children, the contact arrangements will be facilitated through voluntary contact centers. When there are concerns for the physical safety and emotional well being of a child (in case of domestic violence, abuse, or abduction) during contact, the court likely to apply supervised contact order and supervision in this case will be carried out by the

trained professionals, e.g. by NACCC staffs.[80] When there is no possible risk to the children well being during contact but needed a comfortable environment to enjoy contact arrangements, supported contact order may be preferable and in such a case contact between non-resident parents and children is usually supported through the child contact centers, such as NACCC.[81] In this way, voluntary support contact centers are playing a vital role in facilitating children's contact arrangements to the non-resident parents.

While the court is making or varying a CO, with the implementation of the Children and Adoption Act 2006, it may also be made a contact activity direction in connection with CO, and an individual who is a party to the proceedings may be directed to take part in any activity, such as programmes, classes, and counseling or guidance sessions in order to promote contact with the child concerned.[82] It is primarily designed to help those parents who have in a highly conflicted hostile nature and to support them to be able to make co-operative parenting decision for their children.

Making a CO is legally meant imposing a responsibility on the resident parent to allow the children to contact or stay with the person named in the order. However, it does not oblige the children to see the person with the order, nor the non-resident parents to make regular contact with the children, nor the resident parents to co-operative actively with their ex-spouses. Therefore, enforcing a contact order has been a difficult matter for many years and is still a contentious issue in the private law arena. The discussion about facilitating contact arrangements will be presented in part V.

### c. Others

Other orders that the court may make under Section 8 of the CA 1989 are prohibited step orders (hereinafter as PSO) and specific issue order (hereinafter SIO).

PSO is usually made to prevent any person from taking any step which is specified in the order without the consent of the court. It is commonly used to prevent children from being removed from the jurisdiction, to prevent parents from changing the child's surname[83], and to prevent children from contact with the undesirable person[84] and so on. In 2009, 28 percent of private law cases were sought for PSO.[85]

SIO is an order giving directions for the purpose of determining a specific question which has arisen, or may arise, in connection with any aspect of parental responsibility for a child. It is commonly used when people with PR are disagreeing on children upbringing matters, such as to which school the children should go, which religion the children should take, whether the children should accept medical treatment, and so on.[86] In 2009, 10 percent of private law cases were sought for SIO.

Regarding the resolution system of child-related disputes after the parental relationship dissolution, it is interesting that the court may grant the different types of residence and contact orders to the divorcing parents depending on the circumstances. In the context of residence order, either sole or shared residence order may be granted and in the context of contact order, direct or indirect or supervised or supported contact order may be granted conditionally. What type of orders should be granted to the parents is mainly relied on the court's discretion with the support of relevant legal provision and its consideration of the children's interest as the paramount. In most cases, mothers are usually granted sole residence order and most fathers become non-resident parents then. This may be the same situation as in other countries including Japan. However, unlike in Japan, there are supported child contact centers in England and Wales and they aim to help separated or divorced families to develop their contact arrangements between non-resident parents and children smoothly. This may be seen as a great professional support for the welfare of children and it will work greatly as long as the resident-parent cooperates within it.

In the case of granting shared-residence order, children can share their times between their parents alternately and both parents do not lose their opportunities to live with their children even after dissolving their relationship. This may be the most desirable scheme for both parents and children. However, it will be effective only if both parents are able to manage their conflicts to be minimized and willing to cooperate for the sake of their children. Unless the parents do so, their children may have some complex psychological tasks while adjusting their different life-styles in different homes and eventually it may become a big problem for their development.

Therefore, it may be said that parents' understanding and cooperation plays an important role in making of the best arrangements for their children after the dissolution of their relationship: without it, both the legal and professional support can not work effectively.

## V. Ongoing Relationship between Children and Non-resident Parent

Under the government policy, ongoing relationship between children and non-resident parent after parental relationship dissolution is desirable unless there is a specific reason to concern the children's safety and well being.[87] Ongoing relationship maintenance is deeply associated with the regular contact incident between children and non-resident parents. From this point of view, a number of legal intervention and professional supporting were provided to those people involved in the dissolution of parental relationships in

facilitating the development of children's contact to their non-resident parents. Nonetheless, the practice of contact and the enforcement of CO are still so difficult for certain reasons that the current system was criticized at some points.

One of the important facts which may affect the successful contact arrangement is the quality of parental relationship before and after the relationship dissolution.[88] Where the dissolution was occurred by virtue of one's fault or internal problems, most parents (not all) were likely to blame each other rather than focusing on their children's needs.[89] They viewed themselves as good parents who were right; however, their ex-spouse as bad parents who were wrong.[90] This may make difficulties while facilitating the meaningful contact between children and non-resident parents: if they are able to limit their conflicts and keep the children out of their conflicts, regular contact arrangements may be possible between children and non-resident parents; if they are unable to overcome their conflicts, contact arrangements between their children and non-resident parents may be occurred only occasionally; and if their conflict is too severe with the children, contact between children and non-resident may be non-existent.[91] When they can not make an effort at arranging meaningful contact with their children on their own, external professional support can be asked from the voluntary contact centers.

Regarding the current operation system, both resident and non-resident parents (usually mothers and fathers) expressed some dissatisfactory facts based on their own experiences:[92] the resident parents' concern was related with the granting of CO to the violent ex-spouses and the non-resident parents' concern was related to the gender-biased operating system.

Although domestic violence is a considerable factor whether a CO should be granted, it can not be barred granting a CO. The court usually makes a balance between the possible risks to the well being of the children and the possible outcomes in favor of CO to violent ex-spouse[93] which mainly based on CFCASS officer's report.[94] If no severe concern is found, CO may be granted but limited under professional supervision. In this case, the resident mother will have a great distress on the contact arrangement between children and her violent ex-spouse. However, some researchers proved that more than half of children, whose parents were in a violent relationship, were enjoying a good relationship with those violent parents without any violent or abuse experiences.[95]

Even though the court is trying to grant CO as much as possible, non-resident fathers are not satisfied with its operating system. They criticized it as a maternal preference system based on gender-bias. They are not happy with the typical court practice of parenting plans after dissolution in which mothers are

usually granted status as resident parents and fathers as non-resident parents with CO conditionally.[96] After the court has granted mother as resident parents, they are thereafter likely to manage father's involvement in the children's lives. Normally they try to oppose a children's contact arrangement with non-resident fathers.[97] This is contrary to the government policy which believes that both resident and non-resident parents are equally important to the children's lives and both should ensure that their children have meaningful contact with non-resident parents. To achieve this policy, the vulnerable non-resident fathers should have better legal rights to demand better arrangements to the children.

As have already explained, developing contact arrangement between children and non-resident parents is really a contentious matter and it may not be successful without the co-operation of resident parents. Importantly, CO may become meaningless when the children are refusing seeing non-resident parents. Under the current system, child contact arrangements are a child-centered issue and when children do not have a wish to see other parents, no one can force them not to do so. To resolve such cases, a couple of schemes were introduced and it achieved promotion of the children's situation to certain extent by using legal intervention and assistance from non-governmental or non-profit organizations. However, it does not give a satisfactory improvement. As a result, in recent times, different arguments came out on this complicated issue: some say that contact should be the right of the children under the UN convention of the Rights of the Child, whilst some believe that contact should be the right of the parents under the European Convention on Human Rights (hereinafter ECHR).

## VI. Conclusion

With the family diversity in today's society of England and Wales, the relationship between parents, and between parents and children are too complicated to understand. To solve such problems, the law says the woman who gave birth to the child is the legal mother and the mother's husband or male-partnered may become the legal father of the child born. In case of female same-sex relationship, the mother's female partner may become the legal parent of the child and in case of male same-sex relationship, the man who has a genetic link to the child born is the legal father and the father's male partner may become the legal parent of the child. A surrogate mother may no longer be a parental status after granting a parental order to a couple. Such complicated relationships between two parents are fragile and a great number of children today are losing the opportunities to stay with both parents at the same time. Under such circumstances, a meaningful

children's contact to non-resident parents is encouraged to be regularly for the best interest of the child. In this sense, the court usually tries to persuade both resident-parents and their children to cooperate within their child contact arrangements. These resident-parents should do cooperation in the process because they are the primary responsible person for the development of their children.

As the system is aimed for children to be beneficial fundamentally, the interest of non-resident parents may be less taken into account while facilitating the contact arrangements. Therefore, where the resident parent and their children are not happy together to co-operate in contact arrangements, the position of non-resident parent is becoming vulnerable. Although there are some legal interventions and professional support to facilitate such conditions, it is not satisfactorily worked. Therefore, the state should take its obligation to enforce CO effectively in accordance with ECHR. Under the ECHR, contact is found as a conventional right not only of the children but also of the parents. Therefore, when facilitating contact arrangements between children and non-resident parents, it should be engaged in a balancing exercise, between the rights and interests of all person concerned. By so doing, it may help the vulnerable non-resident parents escaping from a difficult situation.

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